

REMARKS/ARGUMENTS

Claims 1, 4-7, 9-16, 19-22, 24-31, 34-37, and 39-45 are pending in the application. Claims 1, 4, 5, 6, 9, 11, 12, 13, 16, 19, 20, 21, 24, 26, 27, 28, 31, 34, 35, 36, 39, 41, 42, and 43 have been amended. Claims 2-3, 8, 17-18, 23, 32-33, and 38 have been cancelled without prejudice. Reconsideration is respectfully requested. Applicants submit that the pending claims 1, 4-7, 9-16, 19-22, 24-31, 34-37, and 39-45 are patentable over the art of record and allowance is respectfully requested of claims 1, 4-7, 9-16, 19-22, 24-31, 34-37, and 39-45.

Applicants would like to thank the Examiner for indicating that claims 3, 18, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have amended claims 1, 16, and 31 to incorporate the language of dependent claims 2-3, 17-18, and 32-33, respectively. Applicants respectfully submit that claims 1, 16, and 31 are in condition for allowance. Dependent claims 4, 19, and 34 depend from claims 1, 16, and 31, respectively, and are also in condition for allowance.

The Abstract was objected to. Applicants have amended the Abstract to place it in better form and to overcome the objection.

Claims 12-13, 27-28, and 42-43 are rejected under 35 U.S.C. 112, second paragraph. Applicants respectfully traverse, but, to expedite prosecution, Applicants have amended claims 12-13, 27-28, and 42-43 to overcome the objection.

Claims 1, 16, and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Heiner et al. (U.S. 2004/0203827). Applicants respectfully traverse. Also, in light of the amendments to place the claims in condition for allowance, Applicants respectfully submit that the rejection is moot.

Claims 2, 17, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heiner et al. in view of background of Heiner et al. Applicants respectfully traverse. Also, as

dependent claims 2, 17, and 32 have been incorporated into claims 1, 16, and 31, respectively, Applicants respectfully submit that the rejection is moot.

Claims 4, 19, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heiner et al. in view of Okamura et al. (U.S. 2004/0184483). Applicants respectfully traverse. Also, in light of the amendments to place claims 1, 16, and 31 in condition for allowance, Applicants respectfully submit that the rejection is moot.

Claims 5-10, 20-25, and 35-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Okamura et al. (U.S. 2004/0184483). Applicants respectfully traverse, but, to expedite prosecution, Applicants have amended certain claims.

Anticipation requires that the identical invention must be shown in a single reference in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claims 5, 20, and 35 describe computing an actual load balancing share for each data path in a network adapter team by dividing a number of bytes transferred on that data path by a total number of bytes transferred by the network adapter team in a last time frame; and, for each data path, determining whether a load balancing share for the data path in the last time frame is less than the actual load balancing share for the data path and, when the load balancing share is less than the actual load balancing share, adjusting the load balancing share of the data path (e.g. Specification, page 9, paragraph 28; pages 9-10, paragraph 30).

The Okamura patent application describes a quality guaranteed flow that is referred to as a GS (Guaranteed Service) flow and a quality non-guaranteed flow that is referred to as a BES (Best Effort) Service) flow (paragraph 61). Applicants respectfully submit that these do not anticipate the claimed actual load balancing share for each data path in a network adapter team by dividing a number of bytes transferred on that data path by a total number of bytes transferred by the network adapter team in a last time frame and the claimed load balancing share for the data path in the last time frame.

Thus, claims 5, 20, and 35 are not anticipated by the Okamura patent application.

Dependent claims 6-7, 9-10, 21-2, 24-25, and 36-37, and 39-40 each incorporate the language of one of independent claims 5, 20, and 35 and add additional novel elements. Therefore, dependent claims 6-7, 9-10, 21-2, 24-25, and 36-37, and 39-40 are not anticipated by

the Okamura patent application for at least the same reasons as were discussed with respect to claims 5, 20, and 35.

In addition, amended claims 6, 21, and 36 describe computing a difference load balancing value for each data path in the network adapter team by subtracting the load balancing share of the data path from the actual load balancing share of the data path; determining whether a difference between the load balancing share and the actual load balancing share is less than a change threshold; and, when the difference between the load balancing share and the actual load balancing share is less than the change threshold, reducing the load balancing share of the data path; selecting another data path based on the difference load balancing value of each data path; and increasing the load balancing share of the selected data path (e.g., Specification, pages 9-10, paragraph 30; page 10, paragraph 33). Applicants respectfully submit that the Okamura patent application does not anticipate the subject matter of amended claims 6, 21, and 36.

Claims 11, 26, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okamura et al. (U.S. 2004/0184483) in view of background of Heiner et al. Applicants respectfully traverse.

The Heiner patent application does not cure the defects of the Okamura patent application. For example, the Heiner patent application does not teach or suggest the subject matter of amended claims 5, 20, and 35. Therefore, Applicants respectfully submit that amended claims 5, 20, and 35 are not taught or suggested by the Okamura patent application or the Heiner patent application, either alone or in combination.

Dependent claims 11, 26, and 41 each incorporate the language of one of independent claims 5, 20, and 35 and add additional novel elements. Therefore, dependent claims 11, 26, and 41 are not taught or suggested by the Okamura patent application or the Heiner patent application, either alone or in combination, for at least the same reasons as were discussed with respect to claims 5, 20, and 35.

Claims 12-15, 27-30, and 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Carr et al. (USP 6,081,511). Applicants respectfully traverse, but, to expedite prosecution, Applicants have amended certain claims.

Anticipation requires that the identical invention must be shown in a single reference in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claims 12, 27, and 42 describe intercepting a command issued to a target; determining whether the command is capable of being routed through a first network adapter in a network adapter team to the target; routing the command through the first network adapter in response to determining that the command is capable of being routed through the first network adapter; routing the command through a second network adapter in the network adapter team in response to determining that the command is not capable of being routed through the first network adapter; and determining whether to switch between failover mode and failover and load balancing mode based on load balancing shares of data paths between the network adapters in the network adapter team and the target, wherein, when one data path has a hundred percent load balancing share, then failover mode is used (e.g., Specification, page 14, paragraph 47; pages 14-15, paragraph 49).

The Carr patent does not describe intercepting a command issued to a target or determining whether to switch between failover mode and failover and load balancing mode based on load balancing shares of data paths between the network adapters in the network adapter team and the target, wherein, when one data path has a hundred percent load balancing share, then failover mode is used.

Thus, amended claims 12, 27, and 42 are not anticipated by the Carr patent.

Dependent claims 13-15, 28-30, and 43-45 each incorporate the language of one of independent claims 12, 27, and 42 and add additional novel elements. Therefore, dependent claims 13-15, 28-30, and 43-45 are not anticipated by the Carr patent for at least the same reasons as were discussed with respect to claims 12, 27, and 42.

Conclusion

For all the above reasons, Applicants submit that the pending claims 1, 4-7, 9-16, 19-22, 24-31, 34-37, and 39-45 are patentable. Should any additional fees be required beyond those paid, please charge Deposit Account No. 50-0585.

The attorney of record invites the Examiner to contact her at (310) 553-7973 if the Examiner believes such contact would advance the prosecution of the case.

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